

REMARKS

Examiner Corbin is thanked for the courtesy of the telephone interview with the below signed attorney on December 12, 2007. During that interview the claims were discussed in general, and the prior art of record was discussed in general. Primarily the telephone interview was directed to the sufficiency of the Rule 132 declaration previously filed, and an understanding of the Examiner's statement in lines 2-4 on page 4 of the outstanding Office Action. No agreement was reached. However it was the below signed attorney's understanding that the previously submitted declaration would have been sufficient to rebut a rejection where the secondary reference was used as the primary reference. However, as outlined in the Office Action, to rebut a rejection based on the primary references, test data showing a comparison of the invention to the teachings of those references were needed. Specifically the Examiner articulated that to rebut the rejections, a declaration was needed that showed that the method and product of the invention produced an advantage compared to the primary references used in the rejections.

Claims 6, 11, 24-27, 30 and 31 were rejected in the outstanding Office Action under 35 U.S.C. §103(a) as unpatentable over U. S. Patent No. 5,480,668 (Nofre '668) in view of U.S. Patent No. 4,997,659 (Yatka). This rejection is respectfully traversed.

Claims 6, 11, 24-27, 30 and 31 were rejected in the outstanding Office Action under 35 U.S.C. §103(a) as unpatentable over U. S. Patent No. 5,510,508 (referred to on the face of the patent as Claude et al., but referred to in the Office Action as Nofre et al. 5,510,508, and referred to herein as Nofre '508) or Nofre '668 in view of U.S. Patent No. 4,374,858 (Glass) and Yatka. This rejection is also respectfully traversed.

Applicants are filing herewith a Declaration of Sonya S. Johnson Under 37 C.F.R. § 1.132, which sets forth advantages of the present invention compared to the suggestions in the prior art.

Claims 11, 26-27, 31 and 33 require using an N-substituted derivative of aspartame as part of a coating formed by panning a chewing gum pellet, and claims 34 and 35 require a coated chewing gum product comprising a chewing gum pellet and a coating on the pellet formed by a panning procedure and comprising a N-substituted

derivative of aspartame. It has been discovered that neotame, an N-substituted derivative of aspartame, having the chemical formula specified in claims 31 and 35, produced an advantageous quick release of sweetness when used in a chewing gum coating compared to using the same amount of neotame in the gum composition of the pellet gum. See paragraphs 8 and 9 of the Johnson Declaration, submitted herewith.

The tests that are described in the Johnson Declaration compare gum products made with coatings containing neotame to gum products made with a neotame in the chewing gum composition. The tests compare samples made according to the present invention, and samples made following the alleged teaching of the prior art. The products of Sample No. 054-201B are within the scope of pending claims 34 and 35, and were made by a process that falls within the scope of pending claims 26-27 and 31. The products of Sample No. 054-201A follow the suggestion in Nofre '668 or Nofre '508 to use neotame in chewing gum.

The primary references used in making the rejections, Nofre '668 and Nofre '508, do not give any examples of chewing gum, but do suggest that N-substituted derivatives of aspartame, and neotame in particular, may be used to sweeten chewing gum. In order to make the comparisons as similar as possible, coated chewing gum products were used in both tests, although Nofre '668 and Nofre '508 do not specifically disclose coated chewing gum products. Even when coated chewing gums were compared, it is clear that using neotame in the coating, rather than in the chewing gum composition as suggested in Nofre '668 and Nofre '508, resulted in a product that had a higher initial sweetness release, and a comparable sweetness duration. Since there is no suggestion in the prior art to use an N-substituted derivative of aspartame in a chewing gum coating, this evidence rebuts any *prima facie* case of obviousness that may have been made out by the prior art relied on in the outstanding Office Action.

Since the reasons for the rejections have been overcome, it is believed that the case is in condition for allowance.

Respectfully submitted,

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